

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUAN PELAES PEREZ-URENA,	:	CRIMINAL ACTION NO.
	:	1:05-CR-477-2-CC
Petitioner,	:	
	:	CIVIL ACTION NO.
vs.	:	1:11-CV-1356-CC
	:	
UNITED STATES OF AMERICA,	:	MOTION TO VACATE
	:	28 U.S.C. § 2255
Respondent.	:	

ORDER

This matter is before the Court on the Final Report and Recommendation [Doc. No. 1595] issued by Magistrate Judge Gerrilyn G. Brill on March 27, 2012, recommending that Petitioner Juan Pelaes Perez-Urena's motion to vacate sentence and a certificate of appealability be denied. The record reflects that no objections to the Final Report and Recommendation have been filed and that the time permitted for filing any such objections has elapsed.¹

Having conducted a plain error review in accordance with United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), the Court finds that the Final Report and Recommendation is correct both in fact and in law. Accordingly, the Court **ADOPTS** the Final Report and Recommendation as the decision of this Court. The Court hereby **DENIES** Petitioner's motion to vacate sentence [Doc. No. 1523] and **DENIES** the issuance of a certificate of appealability.

Further, Petitioner's Motion for Reconsideration [Doc. No. 1497] and Request

¹ Petitioner did file a notice of appeal [Doc. No. 1597] from the Final Report and Recommendation, but the Final Report and Recommendation is not a final and appealable order. Perez-Priego v. Alachua Cnty. Clerk of Court, 148 F.3d 1272, 1273 (11th Cir. 1998) (citations omitted). Accordingly, Petitioner's filing of the notice of appeal did not confer jurisdiction over the case from this Court to the United Courts of Appeals for the Eleventh Circuit. See United States v. Kapelushnik, 306 F.3d 1090, 1094 (11th Cir. 2002) (holding that "a premature notice of appeal does not divest the district court of jurisdiction over the case").

to Proceed in Forma Pauperis on Appeal [Doc. No. 1601] are **DENIED as moot.**

SO ORDERED this 17th day of May, 2012.

s/ CLARENCE COOPER

CLARENCE COOPER
SENIOR UNITED STATES DISTRICT JUDGE